

DISTRICT OF COLUMBIA
DOH Office of Adjudication and Hearings
825 North Capitol Street N.E., Suite 5100
Washington D.C. 20002

DISTRICT OF COLUMBIA
DEPARTMENT OF HEALTH
Petitioner,

v.

KINFE-MICHAEL ASRAT
Respondent

Case No.: A-01-80076

FINAL ORDER

I. Introduction

An evidentiary hearing was held in this matter on July 19 and 20, 2001. On July 27, 2001, I issued Findings of Fact and Conclusions of Law (the “July 27 Order”) holding that the Government had proven that “Diesel,” a dog owned by Respondent Kinfe-Michael Asrat, satisfies the definition of “dangerous dog” found in D.C. Code § 6-1021.1(1)(A)(i), now codified as D.C. Code § 8-1901(1)(A)(i) (2001 ed.). That holding requires me to consider whether the dog “would constitute a significant threat to the public health and safety if returned to its owner.” D.C. Code § 6-1021.2(a), now codified as D.C. Code § 8-1902(a) (2001 ed.).

The parties introduced evidence on the significant threat issue during the evidentiary hearing in July. At the hearing, Respondent requested an opportunity to submit additional evidence on that issue if I found that either of his dogs satisfied the definition of a “dangerous dog.”¹ He requested that I allow a period of several weeks for him to gather such evidence. The

¹ The July 27 Order ruled that “Leika,” another dog owned by Dr. Asrat, did not meet the definition of a “dangerous dog.”

Government objected, arguing that a week or two should be sufficient. The July 27 Order granted Respondent's request and established a deadline of August 20, 2001 for the parties to submit additional evidence on the significant threat issue and to identify any witnesses from whom they proposed to introduce additional testimony.

On August 20, 2001, Dr. Asrat did not file any evidence or witness list. Instead, he filed a motion to extend the deadline until August 31, 2001, arguing that he needed additional time to arrange for the dog's vaccinations and to attempt to obtain liability insurance. I granted that motion on August 23, 2001.² On August 31, 2001, the new deadline requested by Dr. Asrat, he again failed to file either new evidence or a witness list. Instead, he sought a further extension of the filing deadline. Once again he argued that he needed additional time to arrange for the vaccinations and to attempt to obtain insurance. He also stated that he intended to obtain accounts of Diesel's demeanor from workers at the animal shelter and to make a videotape of Diesel's behavior there. I granted that motion on September 7, 2001, and set a new deadline of September 14, 2001. The order instructed Dr. Asrat both to identify the specific workers from the animal shelter whom he planned to call and to file and serve any videotape by the new deadline³

² Dr. Asrat also argued that he needed time to obtain additional evidence that would show, contrary to the findings of fact in the July 27 Order, that Diesel did not bite anyone on June 2, 2001. The order granting his motion made clear that no such evidence would be considered unless Dr. Asrat filed, and I granted, a motion for reconsideration. August 23, 2001 Order at 2-3.

³ Dr. Asrat's second motion for extension again stated that he wished to obtain evidence showing the Diesel did not bite anyone on June 2. The order granting the extension noted that he had not complied with the August 23 order, which required him to file a motion for reconsideration if he wished to present such evidence. September 7 Order at 1 n.1. Dr. Asrat never has filed any such motion.

On September 10, 2001, Dr. Asrat filed a motion for yet another extension of the deadline, stating that he would be out of the country until the end of November. He had not disclosed those plans in any of his previous filings and provided no explanation for his failure to do so. Noting that Respondent had not offered any reason why he had been unable to obtain the necessary information within the twice-extended deadline, and that the requested extension would be “the third postponement of an already generous deadline” (September 12, 2001 Order at 1), I denied the motion for a third extension on September 12, 2001.

Respondent did not file any additional evidence by the September 14 deadline, nor did he identify any witnesses he planned to call on the significant threat issue. Because the Government had identified an additional witness it planned to call, I scheduled a hearing for September 26, 2001 to hear that witness’ testimony. Counsel for the Government appeared for the hearing, but Respondent neither appeared nor sent a representative. The Government’s witness was unavailable on the hearing date, so there was no additional testimony. On the Government’s motion, I admitted into evidence the witness statement of its unavailable witness, which had been filed and served on August 31. I then closed the record on the significant threat issue.

Based upon the evidence in the record, and my evaluation of the credibility of the witnesses, I now make the following findings of fact and conclusions of law.

II. Findings of Fact

A. Demeanor Evidence

The parties presented conflicting evidence about Diesel’s disposition. Dr. Asrat, his daughter and a friend all testified that Diesel is a loving, friendly animal who usually runs away

from danger or from a stressful situation, rather than reacting aggressively. The Government, on the other hand, presented evidence that Diesel has behaved aggressively throughout the time that he has been confined in the Animal Shelter and that he is significantly more aggressive than other dogs who are confined there. I will not resolve the conflicts in the testimony concerning Diesel's demeanor. As described below, the evidence demonstrates that Dr. Asrat has not complied with a number of the legal requirements applicable to the owner of a dangerous dog. The extent of his non-compliance is sufficient to warrant the conclusion that there will be a significant threat to public health and safety if Diesel is returned to him, regardless of my evaluation of the evidence concerning Diesel's disposition.

B. Compliance with Statutory Requirements

1. Licensing and Vaccinations. Dr. Asrat has not obtained a license for Diesel, nor has he arranged for current vaccinations for him. Although Dr. Asrat's first two motions for extensions of time recite some difficulties he had encountered in arranging for Diesel's vaccinations at the Animal Shelter, he has provided no evidence explaining why he did not have Diesel vaccinated between September 1 and September 14, the period of the final extension of time that I granted him. Nor has he offered any evidence to explain why Diesel had not been vaccinated before June 9, 2001, the date he was taken to the Animal Shelter.

2. Warning Sign. The property at 3504 13th Street, N.W. does not have a clearly visible warning sign that a dangerous dog is present at the property.

3. Insurance. Dr. Asrat has not obtained a liability insurance policy that would insure him for any personal injuries inflicted by Diesel.

4. Secure Enclosure. Diesel is usually kept indoors in Dr. Asrat's apartment at 3504 13th Street, N.W. and is often kept in a cage there.

5. Permission of the Property Owner. The Government has argued that Dr. Asrat does not own the building at 3504 13th Street, N.W. and, therefore, that there is a question whether Dr. Asrat has the permission of the building's owner to keep Diesel there. I credit Dr. Asrat's testimony that he is financing his purchase of the building through a land contract arrangement. Although legal title is in someone else's name, Dr. Asrat has decisionmaking authority over rental and renovation of apartments in the building, and witnesses universally have referred to him as the landlord of the building. Dr. Asrat, therefore, is the appropriate person to give consent for a dangerous dog to remain in the building, and he obviously has given such consent for Diesel.

III. Conclusions of Law

Because I already have determined that Diesel satisfies the definition of "dangerous dog," the only issue to be decided is whether he would present a significant threat to public health and safety if returned to his owner.

There are two elements to the "significant threat" determination. First, the statute imposes certain mandatory requirements upon the owner of the dog. D.C. Code §§ 6-1021.4, 6-1021.5 [now codified as D.C. Code §§ 8-1904, 8-1905 (2001 ed.)]. An owner's failure to satisfy those requirements demonstrates that the dog is a "significant threat," because those requirements represent minimum standards necessary to safeguard the public from a dog with a proven history of at least one unprovoked attack. Alternatively, it is possible that the Government might prove that there would be a significant threat even if all the statutory requirements were satisfied.

DOH v. Evans, OAH No. A-01-80043 (Final Order, February 9, 2001) at 12-13, *aff'd sub nom.*

Evans v. District of Columbia Dep't of Health, No. 01ca1347 (D.C. Superior Court April 26,

2001). *See also DOH v. Long*, OAH No. A-01-80056 (Final Order July 9, 2001) at 14. In this case, as in *Evans* and *Long*, the evidence of Respondent's non-compliance with several of the statutory requirements warrants the conclusion that the dog would be a significant threat. Consequently, I do not need to decide whether there would be a significant threat even if Dr. Asrat were in compliance with all the statutory requirements.

In concluding that the dog would present a significant threat, I rely upon Respondent's non-compliance with four provisions of D.C. Code § 6-1021.4, now codified as D.C. Code § 8-1904 (2001 ed.).

1. D.C. Code § 6-1021.4(2). This subsection requires the owner of the dog to possess a valid license for the dog. Dr. Asrat's failure to obtain a license for Diesel, both before and after the June 2, 2001 biting incident, shows that he is not responsible with respect to the legal requirements for dog owners.⁴

D.C. Code § 6-1021.4(3). This subsection requires that the dog have current vaccinations. In the District of Columbia, all dogs must be vaccinated against rabies and distemper. D.C. Code § 6-1003, now codified as D.C. Code § 8-1803 (2001 ed.). *See also* 24 DCMR 901. Because Diesel does not have current vaccinations, there is a risk that he could

⁴ As in *Evans*, I do not need to decide whether the absence of a license, by itself, would support a conclusion that the dog would present a significant threat. Dr. Asrat's non-compliance with all of the statutory provisions discussed herein is the basis for the conclusion that the dog would be a significant threat. *Evans, supra* at 13 n. 9. I note, however, that D.C. Code § 6-1021.5(2), now codified as D.C. Code § 8-1905(2) (2001 ed.), imposes a number of responsibilities upon the owner of a dangerous dog when the dog is outside a proper enclosure. At all such times, the dog must be under the control of a responsible person and must be both muzzled and restrained with a leash not longer than four feet. An owner who already disregarded his legal responsibilities for his dog is more likely to fail to comply with other legal responsibilities, including those imposed by § 6-1021.5(2).

transmit rabies to any person or animal that he bites, thereby presenting a significant threat to public health or safety. Here again, Dr. Asrat has failed to comply with a legal responsibility imposed upon all dog owners.

D.C. Code § 6-1021.4(6). This subsection requires the owner to post “a clearly visible written warning sign that there is a dangerous dog on the property with a conspicuous warning symbol that informs children of the presence of a dangerous dog.” Dr. Asrat has not done so. There is an obvious relationship between this requirement and the public health and safety. Persons who live in Dr. Asrat’s building, as well as those passing by, need to know that they should exercise caution when approaching the building. It is especially important that children receive an adequate and understandable warning that a dangerous dog is present.

D.C. Code § 6-1021.4(7). This subsection requires the owner of the dangerous dog to obtain a liability insurance policy with limits of at least \$50,000 for any personal injuries inflicted by the dog. Dr. Asrat has no such policy. Once again, there is an obvious relationship between this requirement and the public health and safety. Dr. Asrat’s failure to obtain such insurance “creates a significant risk that if the dog ever committed a second unprovoked bite in the District of Columbia, a complainant would not have access to all necessary or desirable health care and support because of a lack of recourse to Respondent’s insurance policy.” *DOH v. Perry*, OAH No. A-00-80005 (Final Order, May 3, 2000) at 3. *See also Long, supra* at 17; *Evans, supra* at 14.

The evidence does show that Dr. Asrat has complied with some of the legal requirements applicable to the owners of dangerous dogs. Because Dr. Asrat is the appropriate person to give permission for dangerous dogs to remain on the premises at 3504 13th Street, he satisfies D.C.

Code § 6-1021.4(4), now codified at D.C. Code § 8-1904(4) (2001 ed.), which requires that the owner of the property where the dog will be kept must give permission. In addition, Diesel's confinement indoors satisfies the requirement of D.C. Code § 6-1021.4(5), now codified as D.C. Code § 8-1904(5) (2001 ed.), that there be a "proper enclosure" for the dog.⁵ Nevertheless, for the reasons stated above, Dr. Asrat's non-compliance with four important provisions of the dangerous dog statute persuades me that there would be a significant threat to the public health and safety if Diesel were to be returned to him.

IV. Order

Based upon the foregoing findings of fact and conclusions of law, it is, this _____ day of _____, 2001:

ORDERED, that "Diesel," a dog owned by Respondent Kinfé-Michael Asrat, would constitute a significant threat to the public health and safety if returned to its owner; and it is further

ORDERED that, pursuant to D.C. Code §6-1021.3, now codified as D.C. Code § 8-1903 (2001 ed.), and based upon the above ruling and the ruling in the July 27 Order that Diesel satisfies the statutory definition of a "dangerous dog," the Government may humanely destroy "Diesel"; and it is further

⁵ "Proper enclosure" is defined to include "secure confinement indoors." D.C. Code § 6-1021.1(3), now codified as D.C. Code § 8-1901(3) (2001 ed.).

ORDERED that, pursuant to D.C. Code §6-1021.2(e), now codified as D.C. Code § 8-1902(e) (2001 ed.), Dr. Asrat may, within five days of the date of this order, bring a petition in the Superior Court of the District of Columbia to contest the determination that Diesel satisfies the definition of a “dangerous dog” and the determination that Diesel would present a significant threat to the public health and safety if returned to Dr. Asrat; and it is further

ORDERED by this administrative court, *sua sponte*, that, due to the irreparable injury that will be inflicted in accordance with this order, this order is hereby **STAYED** until 4:00 PM on October 15, 2001 in order to permit Dr. Asrat to seek review and a further stay in the Superior Court. The Government may not destroy the dog before the date and time noted above. This stay will expire automatically, without further order of this administrative court, on the day and time noted above unless the Superior Court or this administrative court grants a further stay; and it is further

ORDERED that the Department of Health shall arrange for hand delivery of a copy of this Order to Dr. Asrat’s residence no later than 5:00 PM on October 5, 2001. The copy shall either be left with Dr. Asrat, with a person of suitable age and discretion at his residence or shall be conspicuously posted on the door of his residence if an appropriate person is not available there to receive it.

/s/ **10/04/01**

John P. Dean
Administrative Judge